

HOUSE BILL No. 1172

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-30-2-151; IC 35-45-5.

Synopsis: Internet gambling prohibitions. Makes Internet gambling a Class B misdemeanor. Makes committing or promoting professional gambling through the Internet a Class D felony. Requires an interactive computer service to discontinue its service if notified by a law enforcement agency that the service is being used to promote professional gambling. Requires an interactive computer service to block access to a site used to promote professional gambling.

Effective: July 1, 2004.

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January 13, 2004, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE BILL No. 1172

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-30-2-151 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 151. IC 35-45-5-4
3 (Concerning public utilities **or interactive computer services** for
4 refusing to provide **a** service, **a facility**, or equipment after notice by
5 a law enforcement agency under the gambling statutes).

6 SECTION 2. IC 35-45-5-1 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. As used in this
8 chapter:

9 **"By means of the world wide web" refers to placement of**
10 **material in a computer server based file archive so that it is**
11 **publicly accessible over the Internet using hypertext transfer**
12 **protocol, file transfer protocol, or other similar protocols.**

13 "Gain" means the direct realization of winnings.

14 "Gambling" means risking money or other property for gain,
15 contingent in whole or in part upon lot, chance, or the operation of a
16 gambling device, ~~but it~~ **and accomplished by any means, including**
17 **by means of the world wide web. The term** does not include



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1 participating in:

- 2 (1) bona fide contests of skill, speed, strength, or endurance in
 3 which awards are made only to entrants or the owners of entries;
 4 or
 5 (2) bona fide business transactions that are valid under the law of
 6 contracts.

7 "Gambling device" means:

- 8 (1) a mechanism by the operation of which a right to money or
 9 other property may be credited, in return for consideration, as the
 10 result of the operation of an element of chance;
 11 (2) a mechanism that, when operated for a consideration, does not
 12 return the same value or property for the same consideration upon
 13 each operation;
 14 (3) a mechanism, furniture, fixture, construction, or installation
 15 designed primarily for use in connection with professional
 16 gambling;
 17 (4) a policy ticket or wheel; or
 18 (5) a subassembly or essential part designed or intended for use
 19 in connection with such a device, mechanism, furniture, fixture,
 20 construction, or installation.

21 **The term includes a device or mechanism available by means of the**
 22 **world wide web. However,** in the application of this definition, an
 23 immediate and unrecorded right to replay mechanically conferred on
 24 players of pinball machines and similar amusement devices is
 25 presumed to be without value.

26 "Gambling information" means:

- 27 (1) a communication with respect to a wager made in the course
 28 of professional gambling; or
 29 (2) information intended to be used for professional gambling.

30 **"Interactive computer service" includes the following:**

- 31 (1) **An information service, system, or access software**
 32 **provider that provides or enables computer access by multiple**
 33 **users to a computer server.**
 34 (2) **An information service, system, or access software**
 35 **provider that provides access to the Internet.**
 36 (3) **An information service, system, or access software**
 37 **provider that is operated or offered by a library or**
 38 **educational institution.**

39 **"Internet" refers to the combination of computer facilities and**
 40 **electromagnetic transmission media, and related equipment and**
 41 **software, comprising the interconnected worldwide network of**
 42 **computer networks that employ the Transmission Control**

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1 **Protocol/Internet Protocol, or any predecessor or successor**
 2 **protocol to transmit information.**

3 "Profit" means a realized or unrealized benefit (other than a gain)
 4 and includes benefits from proprietorship or management and unequal
 5 advantage in a series of transactions.

6 SECTION 3. IC 35-45-5-3 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. A person who
 8 knowingly or intentionally:

9 (1) engages in pool-selling;

10 (2) engages in bookmaking;

11 (3) maintains, in a place accessible to the public, slot machines,
 12 one-ball machines or variants thereof, pinball machines that
 13 award anything other than an immediate and unrecorded right of
 14 replay, roulette wheels, dice tables, or money or merchandise
 15 pushcards, punchboards, jars, or spindles;

16 (4) conducts lotteries, gift enterprises, or policy or numbers
 17 games, or sells chances therein;

18 (5) conducts any banking or percentage games played with cards,
 19 dice, or counters, or accepts any fixed share of the stakes therein;

20 **or**

21 (6) accepts, or offers to accept, for profit, money, or other
 22 property risked in gambling; **or**

23 **(7) engages in an activity described in subdivisions (1) through**
 24 **(6) by means of the world wide web;**

25 commits professional gambling, a Class D felony.

26 SECTION 4. IC 35-45-5-4 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) Except as
 28 provided in subsection (b), a person who:

29 (1) knowingly or intentionally owns, manufactures, possesses,
 30 buys, sells, rents, leases, repairs, or transports a gambling device,
 31 or offers or solicits an interest in a gambling device;

32 (2) before a race, game, contest, or event on which gambling may
 33 be conducted, knowingly or intentionally transmits or receives
 34 gambling information by any means, or knowingly or intentionally
 35 installs or maintains equipment for the transmission or receipt of
 36 gambling information; **or**

37 (3) having control over the use of a place, knowingly or
 38 intentionally permits another person to use the place for
 39 professional gambling; **or**

40 **(4) engages in an activity described in subdivisions (1) through**
 41 **(3) by means of the world wide web;**

42 commits promoting professional gambling, a Class D felony.

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(b) Subsection (a)(1) does not apply to a boat manufacturer who:

(1) transports or possesses a gambling device solely for the purpose of installing that device in a boat that is to be sold and transported to a buyer; and

(2) does not display the gambling device to the general public or make the device available for use in Indiana.

(c) When a public utility is notified by a law enforcement agency acting within its jurisdiction that any service, facility, or equipment furnished by it is being used or will be used to violate this section, it shall discontinue or refuse to furnish that service, facility, or equipment, and no damages, penalty, or forfeiture, civil or criminal, may be found against a public utility for an act done in compliance with such a notice. This subsection does not prejudice the right of a person affected by it to secure an appropriate determination, as otherwise provided by law, that the service, facility, or equipment should not be discontinued or refused, or should be restored.

(d) When a law enforcement agency acting within its jurisdiction notifies an interactive computer service that a service, a facility, or equipment furnished by the interactive computer service is being used or will be used to commit an offense under this section, the interactive computer service shall discontinue or refuse to furnish the service, facility, or equipment to the person who is using or who will use the service, facility, or equipment to commit an offense under this section. No damages, penalty, or forfeiture, civil or criminal, may be found against the interactive computer service for an act done in compliance with the notice. This subsection does not affect the right of a person to secure an appropriate determination that the service, facility, or equipment must not be discontinued or refused, or must be restored.

(e) When a law enforcement agency acting within its jurisdiction notifies an interactive computer service that a site or an area to which the interactive computer service provides access is being used or will be used to transmit or receive gambling information in violation of Indiana law, the interactive computer service shall:

(1) give reasonable notice to the subscribers of its service; and

(2) use all technological means possible to block access to the site or area through its service.

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